

DEAN K. DUNSMORE  
U.S. Department of Justice  
Environment & Natural Resources Division  
801 B Street, Suite 504  
Anchorage, Alaska 99501-3657  
Telephone: (907) 271-5452  
Facsimile: (907) 271-5827  
Email: dean.dunsmore@usdoj.gov

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

TROUT UNLIMITED, INC., and )  
ROBERT B. GILLAM, ) CASE NO. 3:05-CV-0077 (JWS)  
)  
Plaintiffs, )  
)  
v. ) DEFENDANTS' MOTION FOR  
) STAY OF PROCEEDINGS  
) AND STATUS REPORT  
MARY PETERS, Administrator, )  
Federal Highway Administration, )  
DAVID MILLER, Regional )  
Administrator, Federal Highway )  
Administration, )  
)  
Defendants. )  
\_\_\_\_\_  
)

Defendants Mary Peters, Administrator, Federal Highway Administration, and David Miller, Regional Administrator, Federal Highway Administration, move the Court for an order staying all proceedings in this case, including pursuant to D. Ak. LR 16.3(b), the filing of an administrative record, to and including June 30, 2006.

In support of the above motion defendants show:

1. Plaintiffs in their Amended Complaint for Injunctive and

Declaratory Relief (28 USC 2201-2202; 5 USC 501 et seq.) (Docket Entry No. 8), ¶¶ 1, 13-16, 42-63, seek judicial review pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-706, of alleged actions of the Federal Highway Administration (FHWA), and in particular of the alleged approval of a revised environmental assessment and finding of no significant impact for a road and bridge project from Iliamna, Alaska to Nondalton, Alaska. However, as shown in Exhibit 1 to defendants' Answer (Docket Entry No. 9) filed June 30, 2005, the FHWA has pursuant to 23 C.F.R. § 771.129(c) requested The State of Alaska to review and consult with the FHWA with respect to whether the revised environmental assessment and finding of no significant impact challenged by plaintiffs "remain valid." This consultation process has not been completed, and defendants have no knowledge as to when the State will complete this process. Defendants have been informed that the State has not even retained the consultant necessary to conduct its review.

2. Given the required and yet to be completed consultation, the FHWA has not taken final action to approve funding for construction of the Iliamna-Nondalton road project. Absent such final agency action, defendants contend that this court lacks jurisdiction over this action. 5 U.S.C. § 704. Further, a determination that the existing revised environmental assessment and finding of no significant impact for the Iliamna-Nondalton

road project is no longer valid will require further analysis of the environmental impacts of that project, and could moot this action. Moreover, until that consultation is completed and a decision made by the FHWA, no complete administrative record can be assembled and filed with the court. Because of this status, defendants previously moved for and were granted a stay proceedings in this case first through November 30, 2005, and then through May 31, 2006. Order (Docket Entry No. 11) filed August 29, 2005, and Order (Docket Entry No. 15) filed December 6, 2005.

3. Given the required consultation by the State and the uncertain status of the proceedings before the State, plaintiff and defendants are exploring options, including possible dismissal or continuation of the existing stay, for this action. The parties, however, need additional time to reach any possible agreement, and have agreed to request an additional stay of proceedings of thirty (30) days to enable the parties to continue to explore these options.

4. Counsel for plaintiffs has authorized defendants to represent that plaintiffs do not oppose a stay of proceedings through June 30, 2006.

Dated this 31st day of May, 2006.

/s/ Dean K. Dunsmore  
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Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of May, 2006 a copy of the foregoing Defendants' Motion for Stay of Proceedings (Unopposed) together with a proposed Order were served by United States mail, first class, postage paid, to the following counsel of record:

Geoffrey Y. Parker

/s/ Dean K. Dunsmore